

Amendment No. 2 to HB2296

Odom
Signature of Sponsor

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Date _____

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Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2198

House Bill No. 2296*

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following language as a new, appropriately designated part:

§ 67-4-3001.

(a) This part shall be known and may be cited as the “Local Tourism Development Zone Business Tax Act” and the taxes imposed by this part shall be in addition to all other privilege taxes.

(b) It is the legislative intent, within the framework of this part, to recognize that there are limitations upon state taxation imposed by the constitutions of the United States and of this state and not to impose the tax where prohibited by the constitutions; but it is intended to impose that tax to the extent permitted under such constitutions and the words of imposition used in this part.

§ 67-4-3002.

As used in this part, unless the context otherwise requires:

(1) “Business” includes any activity engaged in by any person, or caused to be engaged in by the person, with the object of gain, benefit, or advantage, either direct or indirect. “Business” does not include occasional and isolated sales or transactions by a person not routinely engaged in business.

(2) “Cost”, as applied to any public use facility, shall have the same meaning set forth within the provisions § 7-88-103(3);

(3) "Gross sales" means the sum total of all sales under this part as defined in this section, without any deduction whatsoever of any kind or character, except as provided in this part;

(4) "Municipality" means any incorporated city or county located in the State of Tennessee;

(5) "Person" includes any individual, firm, partnership, joint venture, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit, and the plural as well as the singular number;

(6)

(A) "Sale" means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever of tangible personal property for a consideration, and includes the fabrication of tangible personal property for consumers who furnish, either directly or indirectly, the materials used in fabrication work, and the furnishing, repairing or servicing for a consideration of any tangible personal property consumed on the premises of the person furnishing, preparing or serving such tangible personal property;

(B) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price is deemed a sale;

(C) "Sale" includes the furnishing of any of the things or services taxable under this part;

(D) "Sale" includes sales of tickets, fees or other charges made for admission to amusement or theme parks or other tourist attractions;

(7) "Public authority" means any agency, authority or instrumentality described by the provisions of § 7-88-103(5);

(8) "Qualified public use facility" means a building, complex, center or facility described by the provisions of § 7-88-103(7);

(9) "Sales price" means the total amount for which tangible personal property or services rendered is sold, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction from the price on account of the cost of the property sold, the cost of materials used, labor or service cost, losses, or any other expense whatsoever; provided, that "sales price" does not include any additional consideration given by the purchaser for the privilege of making deferred payments, regardless of whether such additional consideration shall be known as interest, time price differential on conditional sales contracts, carrying charges or any other name by which it shall be known, and does not include any additional consideration received by a motor vehicle dealer from a lender for the sale or assignment to the lender of a chattel lease or conditional sales contract; provided further that the "sales price" shall be reduced by the deductions set forth in § 67-4-711. "Sales price" for services rendered by a person for an affiliated business entity does not include any amount that is accounted for as a reasonable allocation of cost incurred in providing the service. "Sales price" does not include any advertising cost paid by a seller to an auctioneer for the purpose of advertising an auction, when no portion of such payment is retained as profit by the auctioneer, and when such payment has been placed in an escrow or a trust account by the auctioneers on behalf of the seller;

(10) "Services" means and includes every activity, function or work engaged in by a person for profit or monetary gain, except as otherwise provided in this part. Services for profit or monetary gain does not include services rendered by a person for an affiliated business entity; provided, that the services are accounted for as allocations of cost incurred in providing the service without any markup whatsoever. "Services" does not include sales of tangible personal property;

(11) "Tangible personal property" means and includes personal property that may be seen, weighed, measured, felt or touched, or is in any other manner perceptible to the senses. "Tangible personal property" does not include stocks, bonds, notes, insurance or other obligations or securities, nor does it include any materials, substances or other items of any nature inserted into or affixed to the human body by duly licensed physicians or dentists or otherwise dispensed by them in the treatment of patients;

(12) "Tourism development zone" means an area described by the provisions of § 7-88-103(9);

§ 67-4-3003.

(a) The making of sales by engaging in any business or business activity, except for those businesses exempt under § 67-4-712, in a qualified public use facility or in such portion of a qualified public use facility as shall be designated by an ordinance of the municipality is declared to be a privilege upon which such municipality in which such business or business activity is carried on may levy a privilege tax in an amount not to exceed five percent (5%) of the sales price. The municipality may also by ordinance levy the privilege tax imposed by this part on businesses in the tourism development zone that are outside the qualified public use facility, which are owned or operated either wholly, partly, or jointly by the owner or operator of the qualified public use facility. Only the municipality that

obtained certification of the tourism development zone in which the qualified public use facility is located is authorized to levy the tax pursuant to this part.

(b)

(1) No ordinance authorizing such privilege tax shall take effect unless it is approved by a two-thirds (2/3) vote of the municipal legislative body at two (2) consecutive, regularly scheduled meetings, or unless it is approved by a majority of the number of qualified voters of the municipality voting in an election on the question of whether or not the tax should be levied.

(2) If there is a petition of ten percent (10%) of the qualified voters who voted in the municipality in the last gubernatorial election that is filed with the county election commission within thirty (30) days of final approval of such ordinance by the municipal legislative body, then the county election commission shall call an election on the question of whether or not the tax should be levied in accordance with the provisions of this section.

(3) The municipal legislative body shall direct the county election commission to call such election, to be held in a regular election or in a special election for the purpose of approving or rejecting such tax levy. The municipality shall pay the cost of any special election.

(4) The ballots used in such election shall have printed on them the substance of such ordinance and the voters shall vote for or against its approval.

(5) The votes cast on the question shall be canvassed and the results proclaimed by the county election commission and certified by it to the municipal legislative body.

(6) The qualifications of voters voting on the question shall be the same as those required for participation in general elections.

(7) All laws applicable to general elections shall apply to the determination of the approval or rejection of this tax levy.

(c) Tax levied pursuant to this part shall continue until the earlier of:

(1) The date on which the cumulative amount, apportioned and distributed to the municipality under § 67-4-3005 and § 7-88-106(a), equals either the cost of the qualified public use facility, plus any interest on indebtedness of the municipality or public authority related to such cost, or such lesser amount of the cost of the qualified public use facility and interest as may be established in authorizing the levy of such tax;

(2) The date on which the qualified public use facility ceases to be a qualified public use facility; or

(3) Thirty (30) years from the date it is reasonably anticipated that the facility will commence operations as a public use facility; at which time the authority of the municipality to levy such tax shall expire and be terminated.

§ 67-4-3004. The tourism development zone business tax is a privilege tax imposed upon persons engaged in various businesses and activities in such portion of a tourism development zone as shall be designated pursuant to § 67-4-3003(a). A dealer may invoice the tax as a separate item and pass it on to the dealer's customers. If the dealer passes the tax on to the customer, the tax shall be added to the gross receipts and be used in determining the tax base for both the business tax and the sales and use tax.

§ 67-4-3005.

(a) The portion of the revenue received by the municipality from the tax, as is designated by the resolution of such municipality enacting the levy of tax set forth in this part, shall be deposited into a fund entitled the qualified public use facility development fund which shall be used as set forth in § 7-88-106 for the purpose of paying the cost of the qualified public use facility and the costs of

bonded indebtedness, principal and interest, including expenses of the bond sale or sales, incurred by the municipality or public authority in financing, acquiring, constructing, leasing, equipping and renovating a qualified public use facility. The remaining revenue shall be deposited in the general fund of the municipality.

(b) If, at the close of any fiscal year, the revenue from such tax shall not be sufficient to meet the total debt service of the municipality or public authority for bonded indebtedness incurred for such qualified public use facility, the balance, if any, of such debt service not paid by revenue of such tax at the end of such fiscal year shall be accumulated in a separate deficit account that shall bear simple interest at the same rate as the bonds issued by each such governmental entity for construction of such facilities. If the municipality or public authority has not incurred bonded indebtedness for such qualified public use facility and at the close of any fiscal year, the revenue from such tax shall not be sufficient to meet the total cost of such qualified public use facility, then the balance, if any, of such cost not paid by revenue of such tax at the end of such fiscal year shall be accumulated in a separate deficit account.

(c) If the revenue from such tax in any fiscal year exceeds the total of such debt service requirements or the total cost of such qualified public use facility for that year, such surplus revenue thus accruing shall be retained by the municipality as a sinking fund for such future debt service requirements or future cost of such qualified public use facility or, alternatively, such surplus may be applied to the reduction of the deficit accounts of the municipality.

§ 67-4-3006. Every person taxable under this part shall, prior to engaging in business as defined in § 67-4-3002, register with the county clerk, in the case of taxes owed to the county, and with the city official designated as the collector of tax by city charter or ordinance, in the case of taxes owed to a municipality.

§ 67-4-3007.

(a) Monthly returns and remittances shall be filed by each business with the county clerk not later than the twentieth day of each month for the preceding month upon forms prescribed, prepared and furnished by the county.

(b) In all cases, the payment of the tax shall accompany the return and failure to so remit the tax shall cause the tax to become delinquent.

(c) The county clerk in administering and enforcing the surcharge or tax shall additionally have those powers and duties with respect to collecting taxes as provided in this title, including, but not limited to, the collection of interest and penalties on businesses.

(d) The municipal legislative body is authorized to adopt reasonable rules and regulations for the implementation of the provisions of this part, including the form for such returns.

§ 67-4-3008.

(a) Upon receipt of the minimum tax prescribed by this part, together with penalties and interest prescribed in this part if such payment is delinquent, it shall be the duty of each collector to issue a license to the taxpayer.

(b) It shall be the duty of each taxpayer to exhibit the license so received.

§ 67-4-3009. This part shall not apply to any county having a metropolitan form of government with a population of more than five hundred thousand (500,000) according to the 2000 federal census or any subsequent federal census.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring

it.